

NCDOT 2018 JLTOC Proposals

1. DOT PROPERTY ACQUISITIONS/RIGHT OF WAY CLAIM AND EXEMPTION FOR PERSON PREPARING A RIGHT OF WAY CLAIM

Recommendation: Amend G.S. 136-19.6 and G.S. 93E-1-3 as below.

Justification: To clarify the terminology and process of the Right of Way Claim. This language was developed, discussed, and shared with interest groups including the NC Association of Realtors, the NC Chapter of the Appraisal Institute, and the NC Appraisal Board.

"§ 136-19.6. ~~Appraisal-waiver valuation~~ Right of Way Claim Report.

(a) Intent. – It is the intent of the General Assembly to provide the Department of Transportation with the resources and flexibility necessary to accelerate the time in which projects are completed while maintaining fairness to affected property owners and other citizens of this State. It is the belief of the General Assembly that providing the Department with the flexibility allowed under subsection (b) of this section will help toward achieving this intent. Therefore, the Department is encouraged to utilize the flexibility provided in subsection (b) of this section for all acquisitions of land in which the ~~value estimate~~ of the acquisition is ~~estimated~~ approximated at ten thousand dollars (\$10,000) or less.

(b) Permissive Exception to Appraisal. – When the Department acquires land, and except as otherwise required by federal law, an appraisal is not required if the Department determines that the anticipated ~~value estimate~~ of the proposed acquisition is estimated at forty thousand dollars (\$40,000) or less, based on a review of data available to the Department at the time the Department begins the acquisition process. If the Department determines that an appraisal is unnecessary, the Department may prepare ~~an appraisal-waiver valuation~~ a Right of Way Claim Report instead of an appraisal. The Department may contract with a qualified third party to ~~an appraisal-waiver valuation prepare a Right of Way Claim Report~~. Any person ~~performing an appraisal-waiver valuation preparing a Right of Way Claim Report~~ must have a sufficient understanding of the local real estate market ~~to be qualified to perform the appraisal-waiver valuation~~.

(c) Construction. – Nothing in subsection (b) of this section shall be construed as superseding or altering any provision of federal law requiring the Department to obtain an appraisal of a property the Department is attempting to acquire."

"§ 93E-1-3. When registration, license, or certificate not required.

- (f) A trainee registration, license, or certificate is not required under this Chapter for:
- (1) Any person, partnership, association, or corporation that performs appraisals of property owned by that person, partnership, association, or corporation for the sole use of that person, partnership, association, or corporation;
 - (2) Any court-appointed commissioner who conducts an appraisal pursuant to a judicially ordered evaluation of property;
 - (3) Any person to qualify as an expert witness for court or administrative agency testimony, if otherwise qualified;

- (4) A person who appraises standing timber so long as the appraisal does not include a determination of value of any land;
- (5) Any person employed by a lender in the performance of appraisals with respect to which federal regulations do not require a licensed or certified appraiser; ~~and~~
- (6) A person who performs ad valorem tax appraisals and is certified by the Department of Revenue under G.S. 105-294 or G.S. 105-296; ~~and~~
- (7) A person who prepares a right of way claim report pursuant to G.S. 136-19.6;

however, any person who is registered, licensed, or certified under this Chapter and who performs any of the activities set forth in subdivisions (1) through (5) of this subsection must comply with all of the provisions of this Chapter. The provisions of this Chapter shall not apply to certified real estate appraisers who perform a broker price opinion or comparative market analysis pursuant to G.S. 93E-1-3(c), as long as the appraiser is licensed as a real estate broker by the North Carolina Real Estate Commission and does not refer to himself or herself as being a registered trainee or a licensed or certified real estate appraiser, and provided they follow the standards set forth in Article 6 of Chapter 93A.”

2. “DOT REPORT” PROGRAM

Recommendation: G.S. 136-18.05 as amended by S.L 2017-57 Section 34.16(a) to be rewritten as below.

Justification: The AR report fits within the intent of a performance dashboard, and can be made available on the existing DOT performance dashboard on demand. Further, there is potential for automation, reducing administrative resources spent developing it each month. The baseline unit price report is requested to move from quarterly to annually. An annual report would better account for seasonal fluctuations in unit prices, as well as reduce the significant administrative resources required to produce it. Further, the submission date is requested to be moved to February 15 not only to distance it from the winter holidays, but to allow staff additional time to prepare it with minimal disruption to their existing workload.

“...

- (1) Responsiveness. – The Department shall structure the Program to gather citizen input and shall commit to quickly addressing structural problems and other road hazards on State-maintained roads. Citizens may report potholes, drainage issues, culvert blockages, guardrail repairs, damaged or missing signs, malfunctioning traffic lights, highway debris, or shoulder damage to the Department of Transportation by calling a toll-free telephone number designated by the Department or submitting an online work request through a Web site link designated by the Department. Beginning January 1, 2016, upon receiving a citizen report in accordance with this subdivision, the Department shall either address the reported problem or identify a solution to the reported problem. Excluding potholes, which shall be repaired within two business days of the date the report is received, the Department of Transportation shall properly address (i) safety-related citizen reports no later than 10 business days after the date the report is received and (ii) non-safety-related citizen reports no later than 15 business days after the date the report is received. The Department shall determine, in its discretion, whether a citizen report is safety-related or non-safety-related. The Department shall transmit information received

about potholes or other problems on roads not maintained by the State to the appropriate locality within two business days of receiving the citizen report. The Department shall provide a monthly report on the DOT's performance dashboard ~~to all of the following~~ on the number of citizen reports received under this subdivision for the month immediately preceding the monthly report, the number of citizen reports fully addressed within the time frames set forth in this subdivision for the month immediately preceding the monthly report, the number of citizen reports addressed outside of the time frames set forth in this subdivision for the month immediately preceding the monthly report, and the number of citizen reports not fully addressed for the month immediately preceding the report.:

- a. ~~The Joint Legislative Transportation Oversight Committee.~~
- b. ~~The Fiscal Research Division of the General Assembly.~~
- c. ~~The chairs of the House of Representatives Appropriations Committee on Transportation.~~
- d. ~~The chairs of the Senate Appropriations Committee on the Department of Transportation.~~

- (1a) Efficiency. – The Department shall adopt procedures in all stages of the construction process to streamline project delivery, including consolidating environmental review processes, expediting multiagency reviews, accelerating right-of-way acquisitions, and pursuing design build and other processes to collapse project stages. By December 1, 2015, the Department shall establish a baseline unit pricing structure for transportation goods used in highway maintenance and construction projects and set annual targets for three years based on its unit pricing. In forming the baseline unit prices and future targets, the Department shall collect data from each Highway Division on its expenditures on transportation goods during the 2015-2016 fiscal year. Beginning January 1, 2016, no Highway Division shall exceed a ten percent (10%) variance over a baseline unit price set for that year in accordance with this subsection. The Department of Transportation shall institute quarterly annual tracking to monitor pricing variances. The ten percent (10%) maximum variance set under this subsection is intended to account for regional differences requiring varying product mixes. The Department of Transportation shall report to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division on December 1, 2015, on information required by this subsection. If a Highway Division exceeds the unit pricing threshold, the Department of Transportation shall submit a report to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division no later than the fifteenth day of February following the end of the quarter calendar year on why the variance occurred and what steps are being taken to bring the Highway Division back into compliance. In order to drive savings, unit pricing may be reduced annually as efficiencies are achieved.

...”

3. POWERS OF DEPARTMENT OF TRANSPORTATION

Recommendation: G.S. 136-18 to be rewritten as below.

Justification: RPOs and MPOs are valuable partners in delivering infrastructure improvements, and should be explicitly named in this legislation to remove ambiguity. This further aligns these statutes with the STI process.

“ ...

- (39) To enter into partnership agreements with private entities, and authorized political subdivisions including Rural and Metropolitan Planning Organizations to finance, by tolls, contracts, and other financing methods authorized by law, the cost of acquiring, constructing, equipping, maintaining, and operating transportation infrastructure in this State, and to plan, design, develop, acquire, construct, equip, maintain, and operate transportation infrastructure in this State. An agreement entered into under this subdivision requires the concurrence of the Board of Transportation. The Department shall report to the Chairs of the Joint Legislative Transportation Oversight Committee, the Chairs of the House of Representatives Appropriations Subcommittee on Transportation, and the Chairs of the Senate Appropriations Committee on the Department of Transportation, at the same time it notifies the Board of Transportation of any proposed agreement under this subdivision. No contract for transportation infrastructure subject to such an agreement that commits the Department to make nonretainage payments for undisputed capital costs of a completed transportation infrastructure to be made later than 18 months after final acceptance by the Department of such transportation infrastructure shall be executed without approval of the Local Government Commission. Any contracts for construction of highways, roads, streets, and bridges which are awarded pursuant to an agreement entered into under this section shall comply with the competitive bidding requirements of Article 2 of this Chapter.

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4. AGREEMENTS/CONSULTATIONS

Recommendation: G.S. 136-12.1 to be repealed.

Justification: In the early 1990’s there was interest from FHWA in funding the purchase and removal of non-conforming signs under the National Highway Beautification Act. It is our understanding that this report was required by the NCGA beginning in 1993 with the goal of tracking the progress of that initiative. However, the federal program was never funded, so no progress has been made in terms of the State purchasing non-conforming signs. Going forward, if there is interest in the information historically provided in this report, the Department will be glad to provide it upon request.

~~“§ 136-12.1. Biennial report on off-premise sign regulatory program.~~

~~The Department of Transportation shall make a biennial report to the General Assembly beginning on January 1, 1993, on its Off-Premise Sign Regulatory Program.~~

~~The report shall include:~~

- ~~(1) — The number of off-premise signs (billboards) that conform with State and local regulations and the number of off-premise signs that do not conform with State and local regulations in each county along federal-aid primary highways.~~

- ~~(2) The number of conforming and nonconforming off-premise signs on State-owned railroad right-of-way.~~
- ~~(3) The number of nonconforming off-premise signs removed during the fiscal year.~~
- ~~(4) The number of permitted tree cuttings and the number of illegal tree cuttings in front of off-premise signs.~~
- ~~(5) Expenses incurred in regulating off-premise signs and receipts from application and renewal permit fees. (1991, c. 689, s. 208.)”~~

5. DOT/OUTSOURCING AND PROJECT DELIVERY REPORTS

Recommendation: G.S. 136-12.3 as amended by S.L. 2017-57 Section 34.13 to be rewritten as below to require an annual report.

Justification: The outsourcing and project delivery reports are naturally associated, and it is logical to combine them as permitted by existing statute. The outsourcing report should satisfy its intent as an annual report, as opposed to biannual. This will produce consistent annual reporting, and reduce administrative resources needed.

"§ 136-12.3. Outsourcing and project delivery reports.

(a) Intent. – It is the intent of the General Assembly to take all steps necessary to assist the Department of Transportation in accelerating project delivery and reducing costs incurred by the State. The General Assembly finds that shifting more control over projects to each of the Highway Divisions can assist in achieving this intent. Further, the General Assembly encourages each Highway Division to increase its outsourcing of preconstruction activities to private contractors to sixty percent (60%) of the total cost of preconstruction activities performed by the Highway Division, with the belief that increased outsourcing will also assist in achieving this intent. Therefore, in order to assess the results from shifting project control and increasing the use of outsourcing, and to determine what adjustments may be necessary to improve upon the results, the General Assembly finds that reports are necessary to collect baseline data to establish appropriate targets.

(b) Outsourcing Report. – For each Highway Division, the Department shall provide a detailed ~~bi~~annual report on all payments made to private contractors for preconstruction activities. In order to compare internal costs incurred with payments made to private contractors, and except as otherwise provided in this subsection, the Department shall include project-specific expenses incurred by division, regional, or central staff. The Department shall not include expenses incurred for central business units that support and oversee outsourcing functions. The information in the first report submitted under this subsection shall be used to establish a baseline to use for setting future preconstruction outsourcing targets. The Department shall submit the reports required under this subsection to the Joint Legislative Transportation Oversight Committee by ~~September 1 and~~ March 1 of each year.

(c) Project Delivery Report. – For each Highway Division, the Department shall provide a detailed annual report in accordance with the following requirements:

- (1) The report shall detail the progress of the following types of projects in the State Transportation Improvement Program current for the period covered by the report:

- a. Bridge projects with a cost in excess of ten million dollars (\$10,000,000).
 - b. Interstate highway projects.
 - c. Rural highway projects.
 - d. Urban highway projects.
- (2) For each project, the report shall indicate the status of all of the following phases:
- a. Planning ~~a~~ and design in progress.
 - b. Right-of-way acquisition in progress.
 - c. Project let for construction.
 - d. Construction substantially complete and traffic using facility.
- (3) For each project, and as applicable, the report shall include an indication and explanation for project stages that are delayed during the period covered by the report and the delay has been for more than one year.
- (4) For each project, the report shall include the planned and actual completion date for any required environmental documentation.
- (5) The Department shall submit the report required under this subsection to the Joint Legislative Transportation Oversight Committee by March 1 of each year.
- (d) Combined Report. – The Department may combine the reports required to be submitted by March 1 under subsections (b) and (c) of this section into a single report.
- (e) Consultation Required. – If a Highway Division fails to meet the established preconstruction outsourcing target in two consecutive reports submitted under subsection (b) of this section, or if a report submitted under subsection (c) of this section identifies a Highway Division as having three or more project stages delayed for more than one year, the Division Engineer of the Highway Division identified in the report shall consult with the Joint Legislative Transportation Oversight Committee. The Division Engineer shall submit a request for consultation to (i) all members of the Committee, (ii) the chairs of the House of Representatives Appropriations Committee on Transportation if the General Assembly is in session at the time consultation is required under this subsection, (iii) the chairs of the Senate Appropriations Committee on the Department of Transportation if the General Assembly is in session at the time consultation is required under this subsection, and (iv) the Fiscal Research Division of the General Assembly. The request for consultation shall consist of a written report providing an explanation for the failure or delay and a plan for remedying the failure or delay. If the Committee does not hold a meeting to hear the consultation required by this subsection within 90 days after the consultation request has been submitted, the consultation requirement is satisfied."

6. ANNUAL CONSTRUCTION PROGRAM

Recommendation: G.S. 136-44.4 to be repealed:

Justification: This statute is no longer relevant to current practices of the Department. This section was last amended in 2009, and has been replaced by the State Transportation Improvement Program.

~~“§ 136-44.4. Annual construction program; State primary and urban systems.~~

~~The Department of Transportation shall develop an annual construction program for the state-funded improvements on the primary and urban system highways and for all other federal aid construction programs which shall be approved by the Board of Transportation. It shall include a statement of the immediate and long-range goals. The Department shall develop criteria for determining priorities of projects to insure that the long-range goals and the statewide needs as a whole are met, which shall be approved by the Board of Transportation. The annual construction program shall list all projects according to priority. A brief description of each project shall be given, identifying the highway number, county, nature of the improvement and the estimated cost of the project shall be indicated. Other transportation systems shall be similarly identified. Copies of the most recent annual work program shall be made available to any member of the General Assembly upon request. The Department of Transportation shall make annual reports after the completion of the fiscal year to be made available to the legislative committees and subcommittees for highway matters, county commissioners, and other persons upon request. These reports shall indicate the expenditure on each of the projects and the status of all projects set out in the work program.”~~

7. ANNUAL HIGHWAY CONSTRUCTION AND MAINTENANCE REPORT

Recommendation: Combine/codify/conform with Section 75 of S.L. 1981-859

Justification: NCDOT has historically submitted an annual report based on the requirements laid out in Section 75 of S.L. 1981-859. This provision will codify that session law by revising a similar reporting requirement in G.S. 136-12 to mirror the session law’s reporting requirements.

§ 136-12. Reports to General Assembly; Transportation Improvement Program submitted to members and staff of General Assembly.

(a) ~~The Department of Transportation shall report to Joint Legislative Transportation Oversight Committee by March 1 of each year how the previous fiscal year's funds for maintenance and construction were allocated and expended. The report shall include expenditures of both State and federal funds and shall be in sufficient detail that the county and project can be identified. To the extent practicable, the report shall identify the types of expenditures such as salaries, wages, equipment, and supplies. shall, on or before the tenth day after the convening of each regular session of the General Assembly of North Carolina, make a full printed, detailed report to the General Assembly, showing the construction and maintenance work and the cost of the same, receipts of license fees, and disbursements of the Department of Transportation, and such other data as may be of interest in connection with the work of the Department of Transportation.~~ A full account of each road project shall be kept by and under the direction of the Department of Transportation or its representatives, to ascertain at any time the expenditures and the liabilities against all projects; also records of contracts and force account work. The account records, together with all supporting documents, shall be open at all times to the inspection of the Governor or road authorities of any county, or their authorized representatives, and copies thereof shall be furnished such officials upon request.

(a1) Repealed by Session Laws 2011-145, s. 28.35(a), effective July 1, 2011.

(b) At least 30 days before it approves a Transportation Improvement Program in accordance with G.S. 143B-350(f)(4) or approves interim changes to a Transportation

Improvement Program, the Department shall submit the proposed Transportation Improvement Program or proposed interim changes to a Transportation Improvement Program to the following members and staff of the General Assembly:

- (1) The Speaker and the Speaker Pro Tempore of the House of Representatives;
- (2) The Lieutenant Governor and the President Pro Tempore of the Senate;
- (3) The Chairs of the House and Senate Appropriations Committees;
- (4) Each member of the Joint Legislative Transportation Oversight Committee;
and
- (5) The Fiscal Research Division of the Legislative Services Commission.

8. REMOVE THE MAILING REQUIREMENT FOR DEALER MANUALS

Recommendation: G.S. 20-302 to be rewritten as below.

Justification: The elimination of mailing dealer manuals will save the Division an estimated \$40,000 per year in printing cost. With this language, the manual will be posted online for dealers to access at any time and will be subject to real time updates as required. Updating this document for hard copy reproduction is a time-consuming administrative task for which online production will eliminate.

“§ 20-302. Rules and regulations.

The Commissioner may make such rules and regulations, not inconsistent with the provisions of this Article, as he shall deem necessary or proper for the effective administration and enforcement of this Article, provided that a copy of such rules and regulations shall be ~~mailed to each motor vehicle dealer licensee~~ made available online 30 days prior to the effective date of such rules and regulations.”

9. ALLOW TRANSITIONING MILITARY TRUCK DRIVERS CERTAIN CDL WAIVERS/CREDIT FOR MILITARY SERVICE TRUCK OPERATIONS

Recommendation: G.S. 20-37.13 to be rewritten as below.

Justification: This will allow certain qualified military members currently holding a current military equivalent of a CDL to obtain a Commercial Driver License without taking the knowledge or skills tests and therefore reduce the DMV manpower requirement needed to facilitate this testing. The applicant completes a DMV FORM with current military Commanding Officers endorsement for DMV verification. DMV HQ CDL Unit will review application, scans of current military driving certificates and civilian driving records for consideration in granting the applicants request under the NC Military CDL program. The DMV time requirement for these services will be reduced from up to four hours to approximately ten minutes, aiding our already extremely busy 20 CDL examination locations across the state. This will increase the employability of military members upon transition to the civilian workforce. This initiative is in accordance with current Federal Motor Carrier Safety Regulations.

“§ 20-37.13. Commercial drivers license qualification standards.

(a) No person shall be issued a commercial drivers license unless the person meets all of the following requirements:

- (1) Is a resident of this State.
- (2) Is 21 years of age.
- (3) Has passed a knowledge test and a skills test for driving a commercial motor vehicle that comply with minimum federal standards established by federal regulation enumerated in 49 C.F.R., Part 383, Subparts F, G, and H.
- (4) Has satisfied all other requirements of the Commercial Motor Vehicle Safety Act in addition to other requirements of this Chapter or federal regulation.
- (5) Has held a commercial learner's permit for a minimum of 14 days.

For the purpose of skills testing and determining commercial drivers license classification, only the manufacturer's GVWR shall be used.

The tests shall be prescribed and conducted by the Division. Provided, a person who is at least 18 years of age may be issued a commercial drivers license if the person is exempt from, or not subject to, the age requirements of the federal Motor Carrier Safety Regulations contained in 49 C.F.R., Part 391, as adopted by the Division.

(b) The Division may permit a person, including an agency of this or another state, an employer, a private driver training facility, or an agency of local government, to administer the skills test specified by this section, provided:

- (1) The test is the same as that administered by the Division; and
- (2) The third party has entered into an agreement with the Division which complies with the requirements of 49 C.F.R. § 383.75. The Division may charge a fee to applicants for third-party testing authority in order to investigate the applicants' qualifications and to monitor their program as required by federal law.

(b1) The Division shall allow a third party to administer a skills test for driving a commercial motor vehicle pursuant to subsection (b) of this section any day of the week.

(c) Prior to October 1, 1992, the Division may waive the skills test for applicants licensed at the time they apply for a commercial drivers license if:

- (1) For an application submitted by April 1, 1992, the applicant has not, and certifies that he or she has not, at any time during the two years immediately preceding the date of application done any of the following and for an application submitted after April 1, 1992, the applicant has not, and certifies that he or she has not, at any time during the two years preceding April 1, 1992:
 - a. Had more than one drivers license, except during the 10-day period beginning on the date he or she is issued a drivers license, or unless, prior to December 31, 1989, he or she was required to have more than one license by a State law enacted prior to June 1, 1986;
 - b. Had any drivers license or driving privilege suspended, revoked, or cancelled;
 - c. Had any convictions involving any kind of motor vehicle for the offenses listed in G.S. 20-17 or had any convictions for the offenses listed in G.S. 20-17.4;

- d. Been convicted of a violation of State or local laws relating to motor vehicle traffic control, other than a parking violation, which violation arose in connection with any reportable traffic accident; or
 - e. Refused to take a chemical test when charged with an implied consent offense, as defined in G.S. 20-16.2; and
 - (2) The applicant certifies, and provides satisfactory evidence, that he or she is regularly employed in a job requiring the operation of a commercial motor vehicle, and he or she either:
 - a. Has previously taken and successfully completed a skills test that was administered by a state with a classified licensing and testing system and the test was behind the wheel in a vehicle representative of the class and, if applicable, the type of commercial motor vehicle for which the applicant seeks to be licensed; or
 - b. Has operated for the relevant two-year period under subpart (1)a. of this subsection, a vehicle representative of the class and, if applicable, the type of commercial motor vehicle for which the applicant seeks to be licensed.
- (c1) The Division may waive the skills test for any qualified military applicant at the time the applicant applies for a commercial drivers license if the applicant is currently licensed at the time of application and meets all of the following:
- (1) The applicant has passed all required written knowledge exams.
 - (2) The applicant has not, and certifies that the applicant has not, at any time during the two years immediately preceding the date of application done any of the following:
 - a. Had any drivers license or driving privilege suspended, revoked, or cancelled.
 - b. Had any convictions involving any kind of motor vehicle for the offenses listed in G.S. 20-17 or had any convictions for the offenses listed in G.S. 20-17.4.
 - c. Been convicted of a violation of military, State, or local laws relating to motor vehicle traffic control, other than a parking violation, which violation arose in connection with any reportable traffic accident.
 - d. Refused to take a chemical test when charged with an implied consent offense, as defined in G.S. 20-16.2.
 - e. Had more than one drivers license, except for a drivers license issued by the military.
 - (3) The applicant certifies, and provides satisfactory evidence on the date of application, that the applicant is a retired, discharged, or current member of an active or reserve component of the Armed Forces of the United States and is regularly employed or was regularly employed within the one-year period immediately preceding the date of application in a military position requiring the operation of a commercial motor vehicle, and the applicant meets either of the following requirements:
 - a. Repealed by Session Laws 2013-201, s. 1, effective June 26, 2013.
 - b. Has operated for the two-year period immediately preceding the date of application a vehicle representative of the class and, if applicable, the

type of commercial motor vehicle for which the applicant seeks to be licensed, and has taken and successfully completed a skills test administered by the military.

- c. For an applicant who is a retired or discharged member of an active or reserve component of the Armed Forces of the United States, the applicant (i) has operated for the two-year period immediately preceding the date of retirement or discharge a vehicle representative of the class and, if applicable, the type of commercial motor vehicle for which the applicant seeks to be licensed, and has taken and successfully completed a skills test administered by the military, (ii) has retired or received either an honorable or general discharge, and (iii) has retired or been discharged from the Armed Forces within the one-year period immediately preceding the date of application.

(c2) The one-year period referenced in subdivision (3) of subsection (c1) of this section applies unless a different period is provided by federal law. An applicant may provide his or her Form DD 214, "Certificate of Release or Discharge from Active Duty," and his or her drivers license issued by the military, to satisfy the certification required by subdivision (3) of subsection (c1) of this section. An applicant who is retired or discharged must provide a drivers license issued by the military that was valid at the time of his or her retirement or discharge when using the process in this subsection to satisfy the certification required by subdivision (3) of subsection (c1) of this section.

(c3) The Division may waive the knowledge and skills test for military members who have been issued a military license that authorizes the holder to operate motor vehicles that are representative of the commercial motor vehicle class and endorsements that are applied for from the Division as allowed by 49 CFR USC. The military member must provide competent evidence and certify that he/she:

- (1) is a current or former member of the military services and was issued a military license that authorized the operation of motor vehicles and
- (2) is or was regularly employed within the last year in a military position requiring operation of motor vehicles representative of the commercial motor vehicles the driver applicant operates or expects to operate, immediately preceding separation from the military and
- (3) the applicant must meet at the qualifications listed in (c1)(2).

(d) A commercial drivers license or learner's permit shall not be issued to a person while the person is subject to a disqualification from driving a commercial motor vehicle, or while the person's drivers license is suspended, revoked, or cancelled in any state; nor shall a commercial drivers license be issued unless the person who has applied for the license first surrenders all other drivers licenses issued by the Division or by another state. If a person surrenders a drivers license issued by another state, the Division must return the license to the issuing state for cancellation.

(e) A commercial learner's permit may be issued to an individual who holds a regular Class C drivers license and has passed the knowledge test for the class and type of commercial motor vehicle the individual will be driving. The permit is valid for a period not to exceed 180 days. The fee for a commercial driver learner's permit is the same as the fee set by G.S. 20-7 for a regular learner's permit.

(f) Notwithstanding subsection (e) of this section, a commercial driver learner's permit with a P or S endorsement shall not be issued to any person who is required to register under Article 27A of Chapter 14 of the General Statutes.

(g) The issuance of a commercial driver learner's permit is a precondition to the initial issuance of a commercial drivers license. The issuance of a commercial driver learner's permit is also a precondition to the upgrade of a commercial drivers license if the upgrade requires a skills test.

(h) The Division shall promptly notify any driver who fails to meet the medical certification requirements in accordance with 49 C.F.R. § 383.71. The Division shall give the driver 60 days to provide the required documentation. If the driver fails to provide the required commercial drivers license medical certification documentation within the period allowed, the Division shall automatically downgrade a commercial drivers license to a class C regular drivers license.”

10. PROVIDING FALSE NAMES USED FOR OBTAINING LICENSE, LEARNERS PERMIT, AND SPECIAL IDENTIFICATION TO BE A FELONY

Recommendation: G.S. 20-30 to be rewritten as below.

Justification: This revision will aid the Division by adding a criminal charge to a current civil violation to anyone providing a false name while applying for and/or obtaining a driver license, learner’s permit or special identification issuance. It is our recommendation to move forward with this change to assist with the REAL ID campaign and issuances.

“§ 20-30. Violations of license, learner's permit, or special identification card provisions.

It shall be unlawful for any person to commit any of the following acts:

- (1) To display or cause to be displayed or to have in possession a driver's license, learner's permit, or special identification card, knowing the same to be fictitious or to have been canceled, revoked, suspended or altered.
- (2) To counterfeit, sell, lend to, or knowingly permit the use of, by one not entitled thereto, a driver's license, learner's permit, or special identification card.
- (3) To display or to represent as one's own a drivers license, learner's permit, or special identification card not issued to the person so displaying same.
- (4) To fail or refuse to surrender to the Division upon demand any driver's license, learner's permit, or special identification card that has been suspended, canceled or revoked as provided by law.
- (5) To use a false or fictitious name or give a false or fictitious address in any application for a driver's license, learner's permit, or special identification card, or any renewal or duplicate thereof, or knowingly to make a false statement or knowingly conceal a material fact or otherwise commit a fraud in any such application, or for any person to procure, or knowingly permit or allow another to commit any of the foregoing acts. Any license, learner's permit, or special identification card procured as aforesaid shall be void from the issuance thereof, and any moneys paid therefor shall be forfeited to the State. Any person using or providing a false name under this section shall be guilty of a Class I felony.

Any person violating the other provisions of this subdivision shall be guilty of a Class 1 misdemeanor.

- (6) To make a color photocopy or otherwise make a color reproduction of a drivers license, learner's permit, or special identification card which has been color-photocopied or otherwise reproduced in color, unless such color photocopy or other color reproduction was authorized by the Commissioner. It shall be lawful to make a black and white photocopy of a drivers license, learner's permit, or special identification card or otherwise make a black and white reproduction of a drivers license, learner's permit, or special identification card.
- (7) To sell or offer for sale any reproduction or facsimile or simulation of a driver's license, learner's permit, or special identification card. The provisions of this subdivision shall not apply to agents or employees of the Division while acting in the course and scope of their employment. Any person, firm or corporation violating the provisions of this subsection shall be guilty of a Class I felony.
- (8) To possess more than one commercial drivers license or to possess a commercial drivers license and a regular drivers license. Any commercial drivers license other than the one most recently issued is subject to immediate seizure by any law enforcement officer or judicial official. Any regular drivers license possessed at the same time as a commercial drivers license is subject to immediate seizure by any law enforcement officer or judicial official.
- (9) To present, display, or use a drivers license, learner's permit, or special identification card that contains a false or fictitious name in the commission or attempted commission of a felony. Any person violating the provisions of this subdivision shall be guilty of a Class I felony.”

11. SHARE DRIVER MEDICAL RECORDS WITH STATE AND FEDERAL AUTHORITIES

Recommendation: G.S. 20-7, 20-9, and 20-37.13A to be rewritten as below.

Justification: The Attorney General’s Office has drafted and shared this language to help promote driver safety. Implementing these statute changes are being recommended to assist other state and federal authorities in sharing critical driver medical information. Current law prohibits NCDMV from providing other oversight governmental agencies such as the Federal Motor Carrier Safety Administration with required driver medical information as allowed by the Federal Driver Privacy Protection Act.

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(e) Restrictions. - The Division may impose any restriction it finds advisable on a drivers license. It is unlawful for the holder of a restricted license to operate a motor vehicle without complying with the restriction and is the equivalent of operating a motor vehicle without a license. If any applicant shall suffer from any physical or mental disability or disease that affects his or her operation of a motor vehicle, the Division may require to be filed with it a certificate of the applicant's condition signed by a medical authority of the applicant's community designated by the Division. The Division may, in its discretion, require the certificate to be completed and

submitted after a license or renewal has been issued based on the applicant's performance during a road test administered by the Division. Upon submission, the certificate shall be reviewed in accordance with the procedure set forth in G.S. 20-9(g)(3). This certificate shall in all cases be treated as confidential and subject to release under G.S. 20-9(g)(4)(h). Nothing in this subsection shall be construed to prevent the Division from refusing to issue a license, either restricted or unrestricted, to any person deemed to be incapable of safely operating a motor vehicle based on information observed or received by the Division, including observations during a road test and medical information submitted about the applicant. An applicant may seek review pursuant to G.S. 20-9(g)(4) of a licensing decision made on the basis of a physical or mental disability or disease. This subsection does not prohibit deaf persons from operating motor vehicles who in every other way meet the requirements of this section.

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(g) The Division may issue a restricted or unrestricted driver's license under the following conditions to an otherwise eligible applicant suffering from a physical or mental disability or disease that affects his or her ability to exercise reasonable and ordinary control of a motor vehicle:

- (1) The applicant submits to the Division a certificate in the form prescribed in subdivision (2). The Division may request the certificate at the applicant's initial application, at any time following the issuance of the license, or at the initial application and any time following the issuance of the license. Until a license issued under this subdivision expires, is cancelled, or is revoked, the license continues in force as long as the licensee presents to the Division a certificate in the form prescribed in subdivision (2) of this subsection at the intervals determined by the Division to be in the best interests of public safety.
- (2) The Division may request a signed certificate from a health care provider duly licensed to practice medicine in the United States that the applicant or licensee has submitted to a physical examination by the health care provider. The certificate shall be devised by the Commissioner with the advice of qualified experts in the field of diagnosing and treating physical and mental disabilities and diseases as the Commissioner may select to assist him or her and shall be designed to elicit the maximum medical information necessary to aid in determining whether or not it would be a hazard to public safety to permit the applicant or licensee to operate a motor vehicle, including, if such is the fact, the examining provider's statement that the applicant or licensee is under medication and treatment and that the applicant's or licensee's physical or mental disability or disease is controlled. The certificate shall contain a waiver of privilege and the recommendation of the examining provider to the Commissioner as to whether a license should be issued to the applicant or licensee and whether the applicant or licensee can safely operate a motor vehicle.
- (3) The Commissioner is not bound by the recommendation of the examining health care provider but shall give fair consideration to such recommendation in exercising his or her discretion in making licensing decisions, the criterion being whether or not, upon all the evidence, it appears that it is safe to permit the applicant or licensee to operate a motor vehicle. The burden of proof of such

fact is upon the applicant or licensee. In deciding whether to issue, restrict, cancel, or deny a license, the Commissioner may be guided by the opinion of experts in the field of diagnosing and treating the specific physical or mental disability or disease suffered by an applicant or licensee and the experts may be compensated for their services on an equitable basis. The Commissioner may also take into consideration any other factors which bear on the issue of public safety.

- (4) Whenever a license is restricted, cancelled, or denied by the Commissioner on the basis of a physical or mental disability or disease, the action may be reviewed by a reviewing board upon written request of the applicant or licensee filed with the Division within 10 days after receipt of notice given in accordance with G.S. 20-48 of the action taken. The reviewing board shall consist of the Commissioner or his authorized representative and at least two medical professionals selected by the Commissioner and duly licensed to practice medicine by the appropriate licensing authority in the State. The medical professionals selected by the Commissioner may be compensated for their services on an equitable basis, including reimbursement for ordinary and necessary travel expenses. The Commissioner or his authorized representative, plus any two medical professionals selected by the Commissioner, shall constitute a quorum. The procedure for hearings authorized by this section shall be as follows:

- a. Applicants shall be afforded an opportunity for hearing, after reasonable notice of not less than 10 days, before the review board established by this subdivision. The notice shall be in writing and shall be delivered to the applicant in person or sent by certified mail, with return receipt requested. The notice shall state the time, place, and subject of the hearing. If a hearing is requested under this subdivision to contest a restriction placed on a license under subdivision (3) of this subsection, the restriction shall be stayed unless the Division determines there is an imminent threat to public safety if continued unrestricted driving is permitted. No stay shall be granted if a hearing is requested under this subdivision to contest a denial or cancellation of a license under subdivision (3) of this subsection. Nothing in this sub-subdivision shall be construed as authorizing the stay of a restriction placed on a license pursuant to another provision of law.
- b. The review board may compel the attendance of witnesses and the production of such books, records and papers as it desires at a hearing authorized by the section. Upon request of an applicant or licensee, a subpoena to compel the attendance of any witness or a subpoena duces tecum to compel the production of any books, records, or papers shall be issued by the board. Subpoenas shall be directed to the sheriff of the county where the witness resides or is found and shall be served and returned in the same manner as a subpoena in a criminal case. Fees of the sheriff and witnesses shall be the same as that allowed in the district court in cases before that court and shall be paid in the same manner as other expenses of the Division of Motor Vehicles are paid. In any case

of disobedience or neglect of any subpoena served on any person, or the refusal of any witness to testify to any matters regarding which he may be lawfully interrogated, the district court or superior court where such disobedience, neglect or refusal occurs, or any judge thereof, on application by the board, shall compel obedience or punish as for contempt.

- c. A hearing may be continued upon motion of the applicant or licensee for good cause shown with approval of the board or upon order of the board.
- d. The board shall pass upon the admissibility of evidence at a hearing but the applicant or licensee affected may at the time object to the board's ruling, and, if evidence offered by an applicant or licensee is rejected the party may proffer the evidence, and such proffer shall be made a part of the record. The board shall not be bound by common law or statutory rules of evidence which prevail in courts of law or equity and may admit and give probative value to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. They may exclude incompetent, immaterial, irrelevant and unduly repetitious evidence. Uncontested facts may be stipulated by agreement between an applicant or licensee and the board and evidence relating thereto may be excluded. All evidence, including records and documents in the possession of the Division of Motor Vehicles or the board, of which the board desires to avail itself shall be made a part of the record. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. The board shall prepare an official record, which shall include testimony and exhibits. A record of the testimony and other evidence submitted shall be taken, but it shall not be necessary to transcribe shorthand notes or electronic recordings unless requested for purposes of court review.
- e. Every decision and order adverse to an applicant or licensee shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the board's conclusions on each contested issue of fact. The applicant or licensee shall be notified of the board's decision in person or by registered mail with return receipt requested. A copy of the board's decision with accompanying findings and conclusions shall be delivered or mailed upon request to the applicant's or licensee's attorney of record or to the applicant or licensee, if he or she has no attorney.
- f. Actions of the reviewing board are subject to judicial review as provided under Chapter 150B of the General Statutes.
- g. Repealed by Session Laws 1977, c. 840.
- h. All records and evidence collected and compiled by the Division and the reviewing board shall not be considered public records within the meaning of Chapter 132 of the General Statutes of North Carolina and may be made available to the public only upon an order of a court of

competent jurisdiction. An applicant or licensee may obtain, without a court order, a copy of records and evidence collected and compiled under this subdivision about the applicant or licensee by submitting a written request to the Division, signing any release forms required by the Division, and remitting the required fee set by the Division. All information furnished by, about, or on behalf of an applicant or licensee under this section shall be without prejudice and shall be for the use of the Division, the reviewing board or the court in administering this section and shall not be used in any manner as evidence, or for any other purposes in any trial, civil or criminal except as listed below. The prohibition on release and use under this sub-subdivision applies without regard to who authored or produced the information collected, compiled, and used by the Division under this subdivision. The Division may release any information it deems necessary concerning an individual's ability to safely operate a commercial motor vehicle or ability to obtain a commercial drivers license to any other State or Federal government.

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“§ 20-37.13A. Medical qualifications standards; waiver for intrastate drivers.

(a) Medical Qualifications Standards Applicable to Commercial Drivers. - All commercial drivers license holders and applicants for commercial drivers licenses must meet the medical qualifications standards set forth in 49 C.F.R. § 391.41. As allowed under G.S. 20-9(g)(4)(h), the Division may release any information it deems necessary concerning an individual's ability to obtain a commercial drivers license or operate a commercial motor vehicle to any other State or the Federal government.

(b) Intrastate Medical Waiver. - Any person unable to meet the standards in 49 C.F.R. § 391.41, as adopted by the Division, may apply for a medical waiver that, if approved, will authorize intrastate operation of a commercial motor vehicle. Applications for the medical waiver must be submitted to the Division in writing. Waivers may be granted for no more than two years.

(c) Intrastate Operation Subject to Waiver. - Any person granted an intrastate commercial drivers license medical waiver is permitted to maintain a commercial drivers license and operate a commercial motor vehicle in intrastate commerce subject to the following conditions:

- (1) The commercial drivers license must display a restriction to signify it is only valid for intrastate operation.
- (2) The holder of the license must submit to medical recertification at intervals set by the Division.
- (3) The holder of the license must timely submit all documentation required by the Division.
- (4) Failure to meet any condition within the time period allowed will result in an automatic downgrade of the license holder's commercial drivers license to a Class C regular drivers license.”

12. FERRY ALCOHOL SALES

Recommendation: G.S. 136-82 and 18B-108 to be rewritten as below to allow the sale of alcoholic beverages on ferries, and to expand the use of certain receipts to include repairs.

Justification: This provision will provide NCDOT with the authority to sell alcohol as a concession on its new passenger ferry route between Hatteras and Ocracoke and allow concession sales revenues to be used for ferry passenger vessel repair.

“(f) Authority to Generate Certain Receipts. - The Department of Transportation, notwithstanding any other provision of law, may operate or contract for the following receipt-generating activities and, except as otherwise provided in subsection (f1) of this section, use the proceeds for ferry passenger vessel repair and replacement projects ~~in the manner set forth in subsection (d) of this section~~:

- (1) Operation of, concessions on the ferries and at ferry facilities to provide to passengers on the ferries food, drink, and other refreshments, personal comfort items, Internet access, and souvenirs publicizing the ferry system.
- (2) Sponsorships, including, but not limited to, the sale of naming rights to any ferry vessel, ferry route, or ferry facility.
- (3) Advertising on or within any ferry vessel or at any ferry facility, including, but not limited to, display advertising and advertising delivered to passengers through the use of video monitors, public address systems installed in passenger areas, and other electronic media.
- (4) Any other receipt-generating activity not otherwise forbidden by applicable law pertaining to public health or safety.

The Department may issue rules to implement this subsection.”

“§ 18B-108.1 Sales on trains.

Alcoholic beverages may be sold on railroad trains in this State upon compliance with Article 2C of Chapter 105 of the General Statutes. Malt beverages, unfortified wine, and fortified wine may be sold and delivered by any wholesaler or retailer licensed in this State to an officer or agent of a rail line that carries at least 60,000 passengers annually.

§ 18B-108.2 Sales on ferries.

Alcoholic beverages may be sold on ferries established pursuant to Article 6 of Chapter 136 of the General Statutes. Malt beverages, unfortified wine, and fortified wine may be sold and delivered by any wholesaler or retailer licensed in this State to an officer or agent of the North Carolina Department of Transportation for use on North Carolina Ferry System routes.”